

BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date November 17, 2004

Division County Attorney

AGENDA ITEM WORDING

Approval of contract with Public Defender to defend indigent persons who are accused of county ordinance violations but not ancillary state charges.

ITEM BACKGROUND

As part of the Article V revisions which took effect on July 1, 2004, the Public Defender must enter into a contract with the County before her office can defend an indigent person accused of a county ordinance violation that is not ancillary to a state charge being prosecuted by the State Attorney.

None.

CONTRACT/AGREEMENT CHANGES

New agreement.

Approval.

TOTAL COST Estimated \$2,000 per year.

BUDGETED Yes No xxx

COST TO COUNTY @ \$2,000.

SOURCE OF FUNDS General Funds

APPROVED BY: County Attorney ■

OMB/Purchasing ! Risk Management !

DIVISION DIRECTOR APPROVAL:

 10/31/04
J. R. COLLINS

DOCUMENTATION:

Included

AGENDA ITEM #

R-2

AGREEMENT FOR PUBLIC DEFENDER SERVICES

The Board of County Commissioners of Monroe County, a political subdivision of the State of Florida, ("Board" or "County"), whose address is 1100 Simonton Street, Key West, FL 33040, and the Office of Public Defender for the Sixteenth Judicial Circuit ("Public Defender"), whose address is 524 Eaton Street, Key West, FL 33040, effective the date last below written, hereby agree as follows:

1. Recitations.

1.1 The County has determined that, in order to maintain and improve the public health, safety, and welfare in Monroe County, it is necessary to prosecute violations of the Monroe County Code.

1.2 Section 27.54(2), Florida Statutes (2004) provides, in pertinent part, that the County may contract with the Public Defender on an hourly basis for the services of the Public Defender to defend persons charged with violations of county ordinances punishable by incarceration, when such violations are not ancillary to a state criminal charge.

1.3 Section 27.54(2)(a), Florida Statutes (2004), in pertinent part, requires that the hourly rate for services of the Public Defender must be Fifty Dollars (\$50.00).

1.4 Section 27.54(2)(c), Florida Statutes (2004), requires that payments received by the Public Defender pursuant to this Agreement must be deposited by the Public Defender into the Grants and Donations Trust Fund within the Justice Administrative Commission for appropriation by the Legislature.

1.5 Section 125.69(2), Florida Statutes (2004), provides that (a) the County is authorized and required to pay for the court-appointed legal representation of an indigent defendant charged with a criminal violation of a county ordinance, when such violation is not ancillary to a state criminal charge; and (b) payment shall be for reasonable attorney's fees, costs, and related expenses of the defense. This section further provides that the County may contract with the Public Defender to serve as court-appointed counsel to provide the legal representation.

2. Services To Be Provided By Public Defender.

2.1 The Public Defender will represent indigent defendants in court proceedings involving violations of County Ordinances punishable by

incarceration, where such violations are not ancillary prosecution of state criminal charges. The Public Defender shall provide such personnel as may be required to provide the services contemplated under this Agreement, and representation shall begin upon appointment by the court.

2.2 The Public Defender shall not provide, nor seek payment from the County for, such services where the indigent person is also charged with a felony or misdemeanor under state statutes.

3. Defense Costs and Related Expenses. The Public Defender shall only be entitled to receive costs and related expenses incurred in defending an indigent person pursuant to this Agreement when such costs and related expenses have been found to be reasonable by the court having jurisdiction, and such costs and related expenses have been ordered by the Court to be paid by the County. The Public Defender agrees that the County shall have the right to appear before the court to contest the reasonableness of the costs and related expenses and the obligation of the County to pay for the same.

4. Billing And Payment; Funding.

4.1 The County shall pay the Public Defender the sum of Fifty Dollars (\$50.00) per hour for legal defense services performed pursuant to this Agreement.

4.2 The total amount of the obligation of the County under and during the term of this Agreement is Two Thousand Dollars (\$2,000.00).

4.3 The Public Defender shall, within thirty (30) days of the effective date of this Agreement, forward to the County a statement for services provided to indigent defendants as contemplated in this Agreement for the period from July 1, 2004 through and including the date of the statement. Thereafter, the Public Defender shall forward a statement for services every six months.

4.4 Statements for services shall be in such form and such detail as may be required by the Clerk of Courts, and the Public Defender shall confer with the Clerk concerning the information to be provided and procedures for payment.

4.5 Statements for services shall be forwarded to the County Attorney for review and approval, and if approved, the County Attorney shall forward the statement to the Clerk for payment. If not approved, the County Attorney shall meet and confer with the Public Defender in order to resolve any issues that need to be addressed.

4.6 The billing and payment processes outlined above may be revised if mutually agreed in writing by the County and Public Defender.

4.7 This Agreement is contingent upon an annual appropriation of funds by the County, including any interest thereon, not being subject to any State service charges or administrative assessments and the funds being paid to the Public Defender under this Agreement being exempt from the seven percent service charge to General Revenue pursuant to Section 215.22, Florida Statutes.

5. Term of Agreement; Renewal; Cancellation.

5.1 The initial term of this Agreement shall be through September 30, 2005, unless sooner terminated as may be provided elsewhere in this Agreement. The effective date of commencement for purposes of reimbursement for services is July 1, 2004.

5.2 This Agreement shall be automatically renewed for successive one year terms, unless either the County or the Public Defender provides written notice to the other of an intent to not renew this Agreement. Such written notice shall be provided at least thirty (30) days prior to the expiration of the then-existing term.

5.3 This Agreement may be cancelled by either the County or the Public Defender at any time without cause. Such cancellation shall be effective thirty (30) days from the date of receipt of the written notice of cancellation.

6. Notices. All notices and documents relating to this Agreement shall be provided as follows:

To The County:
County Attorney
P. O. Box 1026
Key West, FL 33040-1026

With a copy to:
County Administrator
Room 205, Gato Building
1100 Simonton Street
Key West, FL 33040

To The Public Defender:
Hon. Rosemary Enright
Public Defender
524 Eaton Street
Key West, FL 33040

7. Retaining of Rights and Responsibilities. The County and Public

Defender each retain all of the rights, responsibilities, and obligations under federal and Florida law which have not been ceded or conferred to the other under this Agreement.

8. Indemnification.

8.1 The County and Public Defender agree that the Public Defender is not an agent or employee of the County, but is only a recipient of the reimbursements to be paid by the County under this Agreement.

8.2 Subject to the provisions of Section 768.28, Florida Statutes (2004) and other limits as may be provided by applicable law or court decision, the County agrees to hold harmless and indemnify the Public Defender from any and all claims which may arise relating to this Agreement due to the negligence of the County, its officers and employees, and agents.

8.3 Subject to the provisions of Section 768.28, Florida Statutes (2004) and other limits as may be provided by applicable law or court decision, the Public Defender agrees to hold harmless and indemnify the County from any and all claims which may arise relating to this Agreement due to the negligence or malpractice of the Public Defender, its officers and employees, and agents.

9. General Provisions.

9.1 Books and Records. Public Defender shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to Public Defender pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Public Defender shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Public Defender.

9.2 Governing Law, Venue, Interpretation, Costs, and Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Public Defender agree that venue will lie in the appropriate court or before the

appropriate administrative body in Monroe County, Florida. The County and Public Defender further agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

9.3 Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Public Defender agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

9.4 Attorney's Fees and Costs. The County and Public Defender agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

9.5 Binding Effect. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Public Defender and their respective legal representatives, successors, and assigns.

9.6 Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and Public Defender action, as required by law.

9.7 Claims for Federal or State Aid. Public Defender and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be

approved by each party prior to submission.

9.8 Adjudication of Disputes or Disagreements. County and Public Defender agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

9.9 Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Public Defender agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Public Defender specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

9.10 Nondiscrimination. County and Public Defender agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Public Defender agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to

nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

9.11 Covenant of No Interest. County and Public Defender covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

9.12 Code of Ethics. County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

9.13 No Solicitation/Payment. The County and Public Defender warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Public Defender agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

9.14 Public Access. The County and Public Defender shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Public Defender in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Public Defender.

9.15 Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Public Defender in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

9.16 Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

9.17 Legal Obligations and Responsibilities: Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

9.18 Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Public Defender agree that neither the County nor the Public Defender or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

9.19 Attestations. Public Defender agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement,

an Ethics Statement, and a Drug-Free Workplace Statement.

9.20 No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

9.21 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

9.22 Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the Board of County Commissioners and the Office of Public Defender have caused this Agreement to be executed by their respective and duly authorized officers.

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
MURRAY NELSON, Mayor/Chairperson

Date: _____

Date: _____

ATTEST:


Office of the Public Defender
Sixteenth Judicial Circuit

By _____

By _____
Rosemary Enright, Public Defender

Date: _____

Date: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

JOHN R. COLLINS
COUNTY ATTORNEY
Date 11/02/04